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# ***Safe and Responsible Use of the Internet: A Guide for Educators***

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## ***Part II. Safe and Responsible Internet Use Plan***

### ***2. Inappropriate Material***

#### **CIPA Requirements**

- (1) IN GENERAL In carrying out its responsibilities under subsection (h), each school or library to which subsection (h) applies shall--
  - (A) adopt and implement an Internet safety policy that addresses the following elements:
    - (i) access by minors to inappropriate matter on the Internet and World Wide Web; (No definition was provided for the term "inappropriate matter.")
    - ...
    - (v) measures designed to restrict minors' access to materials harmful to minors<sup>1</sup>.

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<sup>1</sup> 47 U.S.C. 254 (I)(1)(A)(ii).

(2) LOCAL DETERMINATION OF CONTENT.-- A determination of what matter is considered inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may-

- (A) establish criteria for making such determination;
- (B) review the determination made by the certifying school, school board, local educational agency, library, or other authority; or
- (C) consider the criteria employed by the certifying school, school, school board, local educational agency, library, or other authority in the administration of subsection (h)(1)(b)<sup>2</sup>.

## Defining "Inappropriate"

### *Objectives*

Districts will need to specify to students and staff what kinds of material is considered to be inappropriate to access when using the district's Internet system. The challenge for school districts is to develop a list of the kinds of material that meet the following objectives:

- Effectively outlines the parameters of what is and is not acceptable in accord with educational and pedagogical goals.
- Communicates this information in a manner that is not vague.
- Does not result in the restriction of student access to information based on viewpoint discrimination.
- Promotes, rather than restricts, the effective use of the Internet for educational purposes.
- Addresses the legitimate concerns of parents and community members.

### *Constitutionality*

Supreme Court standards related to the importance of student access to information and the constitutional standards guiding such access were eloquently set forth in the case of *Board of Education, Island Trees Union Free School District No. 26 v Pico*<sup>3</sup>:

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<sup>2</sup> 47 U.S.C. 254 (l)(2). Under 47 U.S.C. 254 (h)(7)(G), the Technology Protection Measure must protect against access to visual depictions that are obscene, child pornography, or harmful to minors. The following are the definitions of these terms provided in the statute: "Obscene. The term 'obscene' has the meaning given such term in section 1460 of title 18, United States Code (47 U.S.C. 254 (h)(7)(E)). Child Pornography. The term 'child pornography' has the meaning given such term in section 2256 of title 18, United States Code (47 U.S.C. 254 (h)(7)(F)). Harmful to minors. The term 'harmful to minors' means any picture, image, graphic image file, or other visual depiction that -- (i) taken as a whole and with respect to minors, appears to a prurient interest in nudity, sex, or excretion; (ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable to minors, as actual or simulated sexual act or sexual conduct, actual or simulated normal or perverted sexual acts, or lewd exhibition of genitals; and (iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors." School districts should be careful to distinguish between materials that Congress has required that a technology protection measure should be used to address and materials that the district decided are inappropriate.

<sup>3</sup> 457 US 853 (1982).

"(T)he state may not, consistent with the spirit of the First Amendment, contract the spectrum of available knowledge. In keeping with this principle, we have held that in a variety of contexts the Constitution protects the right to receive information and ideas...

In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. ...[School] officials cannot suppress 'expressions of feeling with which they do not wish to contend.

(J)ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active participation in the pluralistic, often contentious society in which they will soon be adult members. ...

(S)tudents must always be free to inquire, to study and to evaluate, to gain new maturity and understanding. The school library is the principle locus of such freedom. ... In the school library, a student can literally explore the unknown, and discover areas of interest and thought not covered by the prescribed curriculum....'

In brief, we hold that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." Such purposes stand inescapably condemned by our precedents<sup>4</sup>.

It is essential that school officials make the determination about the "inappropriateness" of certain material in a manner that upholds this constitutional standard. If the district is using a technology protection measure that blocks access to certain sites, it is essential to determine whether or not the company is making decisions in a manner that results in viewpoint discrimination.

### ***District Determination***

In far too many districts, the determination of what material is considered inappropriate is made based on an evaluation of the categories established by a company providing a technology protection measure. This is totally backwards and irresponsible decision-making.

As the *NRC Report* noted:

The determination that particular material is inappropriate for children begins with a human judgement. ... Given a particular universe of material ..., it is likely that any group of judges will agree on some material as "appropriate" and some as "inappropriate," and that there will be some material about which the judges will disagree. ... Indeed, judgments about inappropriateness are closely tied to the values of those making the judgments<sup>5</sup>.

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<sup>4</sup> *Id.* at 866-896 (citations and quotations omitted).

<sup>5</sup> National Research Council. *Youth, Pornography, and the Internet* (Dick Thornburgh & Herbert S. Lin, eds., 2002). URL: [http://bob.nap.edu/html/youth\\_internet/](http://bob.nap.edu/html/youth_internet/) at Section 8.1.1.

School officials should make the determination about what kinds of material are considered to be inappropriate under local community values, not the private companies that are providing a blocking product. Districts must then clearly ascertain whether or not a particular product blocks access in accord with local community standards. This determination will require full disclosure about what kinds of material are blocked in each category that is under consideration to be blocked by the district.

### ***Separate Questions***

The determination of what material is considered to be inappropriate should be made in a manner that is separate from a determination of what categories to block if a district is using a technology protection measure that blocks access to categories of sites. Under CIPA only the category that blocks access to adult sexually related material is required to be blocked.

Districts that use filters for Internet use management – blocking many categories in an effort to manage student use – essentially are demonstrating that they have not focused strongly enough on professional development, education, and supervision. If the district's computers are being used effectively for quality educational activities, if students have been effectively informed of district access policies, and if Internet use is effectively supervised by school personnel, there should be no need to block access beyond that required under CIPA.

If student misuse of the Internet is such that some in the district are arguing for the blocking of additional categories, this should be considered clear evidence of the failure to establish a comprehensive approach to address the safe and responsible use of the Internet.

### ***Clarity***

Some Internet use policies contain language such as: "Students shall not access material that is objectionable, inappropriate, and/or inaccurate." Standards such as these clearly do not meet the above objectives. When districts do not clearly outline what students can and cannot access this places students at significant risk of restrictions or being subjected to discipline based on the individual perceptions of a staff member regarding what kinds of material are appropriate or inappropriate based on their own value personal system.

## **Recommended Classifications**

It is recommended that districts consider the establishment of three classifications of inappropriate material: Prohibited, Restricted, and Limited Access. The following material describes the types of material that could fit into each of these categories with sufficient clarity to provide adequate notice to students. Ultimately, decisions about the classification should be made at the local community level. Therefore, the following recommendations should be considered starting points for discussion.

- **Prohibited Material** Prohibited Material may not be accessed by the students or staff at any time, for any purpose. This material includes material that is obscene, child pornography, material that is considered harmful to minors, as defined by the Children's Internet Protection Act. The district designated the following types of materials as Prohibited: Obscene materials, child pornography, material that appeals to a prurient or unhealthy interest in, or depicts or describes in a patently offensive way, violence, nudity, sex, death, or bodily

functions, material that has been designated as for "adults" only, and material that promotes or advocates illegal activities.

- Restricted Material Restricted Material may not be accessed by elementary or middle school students at any time for any purpose. Restricted Material may be accessed by high school students in the context of specific learning activities that have been approved by a teachers or by staff for legitimate research or professional development purposes. Materials that may arguably fall within the description provided for Prohibited Material that have clear educational relevance, such as material with literary, artistic, political, or scientific value, will be considered to be Restricted. In addition, Restricted Material includes materials that promote or advocate the use of alcohol and tobacco, hate and discrimination, satanic and cult group membership, school cheating, and weapons. Sites that contain personal advertisements or facilitate making online connections with other people are Restricted unless such sites have been specifically approved by the school.
- Limited Access Material Limited Access Material is material that is generally considered to be non-educational or entertainment. Limited Access Material may be accessed in the context of specific learning activities that are directed by a teacher or during periods of time that a school may designate as "open access" time. Limited Access Material includes such material as electronic commerce, games, jokes, recreation, entertainment, sports, and investments.

### **Rationale for Three Categories**

The rationale for the establishment of three categories is that there is some material that should simply never ever be accessed through an educational Internet system – period, full stop, end of discussion. However, there is other material that may present significant concerns if students are freely accessing such material, but may also be quite appropriate for older students if accessed in the context of approved learning activities. An example of type of material that would fall into the Restricted category is "hate literature." Many districts would conclude that students should generally not be allowed to access hate literature. But what about the class that is studying Osama bin Laden? Or the student who wants to do a senior research project on online hate groups? Or the student who wants to research Holocaust revision sites as part of a history study?

How can schools adequately prepare students for "the real world" if students are prevented from learning how to recognize, analyze, interpret, and challenge hate literature or other kinds of "controversial" information? Districts should consider a category of materials that are generally considered to be inappropriate, but may be appropriate for older students to access in the context of specifically approved learning activities. Obviously, schools will need to establish specific requirements to authorize access of such material. In many cases, it would be advisable to inform parents of the intention to allow such access and offer alternative learning activities if a parent objects.

There is other material that is generally not educational, but is more for the purposes of entertainment. Access to such sites would not generally meet the definition of "educational purpose" and may be considered to be inappropriate for this reason. But there are occasions where access to such material may be perfectly appropriate and even desirable. Innovative teachers are using popular culture sites, such as rock star or sports hero sites, in the context of

valuable, engaging learning activities. Some schools may also want to allow certain times for students to use the Internet on a more open access basis. During such times, which should be clearly specified, access to entertainment or other generally non-educational sites may be perfectly acceptable.

## **Other Inappropriate Material Issues**

### ***Material That is Not in Accord with Values Held by Individual Families***

When the district opens up discussions about to the appropriateness or inappropriateness of certain material to parents and community members, there may be efforts to have the district limit access based on specific values of certain families or community groups. Frequently, the types of restrictions advocated will raise concerns of preventing access to information based on viewpoint discrimination.

The district simply cannot enforce a wide range of family values when students are using the Internet. This point must be made clear to all parents, as well as the community. Public institutions have an obligation to conduct their affairs in accord with constitutional law that prohibits the restriction of access to information based on viewpoint discrimination.

However, the district can and should encourage parents to discuss their values with children and encourage students to make decisions regarding their use in accord with their personal and family values, in addition to the school standards. Districts can and should also provide a vehicle for parents to have access to their child's Internet usage records and facilitate their ability to review these logs if they do not have Internet access at home. In this manner, if a parent determines that their child is not using the Internet in accord with their personal family values, that parent can terminate their child's right to access the Internet at school.

It is unlikely that many parents will request such access on a frequent basis. But some may. And many more will appreciate the district's responsiveness to their interest and concern. Further, the fact that students know that their parents can have access to their logs and e-mail at any time will likely have a dampening impact on those who might be inclined to wander into areas that they know would be considered inappropriate.

### ***Teenagers and Use of the Term "Inappropriate to Minors"***

There should be recognition of how this term "inappropriate for minors" is interpreted by teenagers. Indicating to teenage students that certain material is inappropriate for them to look at because they are not old enough to look at it is like painting a red bull's eye on that material. Why? In addition to the general perspective of teenagers that they are old enough for anything, the entertainment industry has been capitalizing on youth rebellion to market adult-rated material to teenagers for a very long time. They have been working closely with child psychologists and marketing specialists to find the best way to utilize restricted ratings as a marketing advantage to reach the teenage audience. For many teenagers, if it is not adult-rated, it is not "cool" and if they are not trying to get to adult-rated stuff, they are not "cool."

Students are generally smart enough not to look at such material in school because of the potential of detection. But if they are told they are not old enough to look at something, which is Safe and Responsible Use of the Internet – Part II, Chapter 2, page 6

the first thing they are likely to do, when given the opportunity. And they will have the opportunity.

The stronger arguments against such materials relate to the violence and disrespect that such materials depict, foster, or encourage. Fortunately our society is becoming more sensitive to the level of media violence and the impact of such violence on people. Schools have made progress in creating healthy school environments that foster respect for all students. Addressing issues of harmful online materials in the context of programs that address hate speech, sexual harassment, discrimination, and bullying will be a more effective educational strategy. Issues related to sexually violent pornography should be integrated into sexual education classes.

### ***Comprehensive Sexual Education Material***

Some educators, parents, and/or community members may question whether students ought to be allowed to access comprehensive online sexual education information. There are some very strong arguments for why such information should be provided in a careful and appropriate manner.

A recent study by the Kaiser Family Foundation<sup>6</sup> revealed that 68% of teenagers had use the Internet to find health information. Of this, 44% sought sexual health information. Nearly half, 46%, of the teenagers reported that they had been blocked from accessing perfectly appropriate health sites by filtering software. However, also of concern is the fact that 70% of the teenagers reported accidentally accessing pornography and just under half (45%) indicated that they were upset by this experience<sup>7</sup>.

Regardless of desires that it not be so, many teenagers are sexually active. They are engaged in sexual intercourse. They are becoming pregnant. They are becoming inflicted with sexually transmitted diseases, including HIV/AIDs. To deny teenagers access to information that will protect their health and well being simply because of a desire that they not engage in sexual activity is simply unconscionable<sup>8</sup>.

If teenagers are interested in finding information about sexual health information on the Internet, they will do so. If they search for such information through standard online search engines, their quest will likely require sifting through a wide range of material that would be considered by most concerned adults to be inappropriate for teenagers.

Clearly, the best way to address the concerns in this area is using an inclusion approach -- providing students with access to sites that have been pre-selected by education and health care professionals as being appropriate sexual education sites for students. A truly comprehensive

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<sup>6</sup> Rideout, V., 2001. *Generation Rx.com: How Young people Use the Internet for Health Information*, The Henry J. Kaiser Family Foundation. Menlo Park, CA. URL: <http://www.kff.org/content/2001/20011211a/>

<sup>7</sup> If 70% of teenagers are accidentally accessing pornography, this means we clearly need to do a better job of educating them how not to access pornography.

<sup>8</sup> The vast majority of parents support comprehensive sex education in schools. Another study by the Kaiser Family Foundation revealed that the majority of parents want their children to receive information on a wide range of sexual issues, including safe sex, contraception, abortion, and sexual orientation information. When given a choice, only 1% to 5% of parents remove their children from comprehensive sexual education classes. Kaiser Family Foundation. *Sex Education in America: A View from Inside America's Classrooms*. (Menlo Park, CA, 2000) URL: <http://www.kff.org/content/2000/3048/SexED.pdf>

approach to the development of such list of approved sites is recommended. Again, if students do not find the information they want or need, they can, and likely will, look for this information in less wholesome environments.

### ***Staff members***

The CIPA requirements related to the use of Technology Protection Measures and restrictions on staff use are very bizarre. Essentially, under CIPA, schools are required to certify that they have installed a Technology Protection Measure to protect minors against access to material that is obscene, child pornography, and material that is harmful for minors. But the provisions for adults in schools require only that material that is obscene and child pornography be restricted. Presumably, Congress felt that it should be perfectly appropriate to allow school staff to access Internet material that is harmful to minors.

This provision represents disconnect from reality. There is absolutely every reason to restrict staff access to inappropriate material on the Internet in the same manner as students. *NO* parent would be comfortable having his or her child in school with a teacher or other staff member who is interested in Internet material that meets the CIPA definition of harmful to minors.